

While the sale of tangible personal property at retail by exclusively religious, educational or charitable organizations or governmental entities is generally subject to Retailer's Occupation Tax, there are three limited exceptions. See 86 Ill. Adm. Code 130.2005(a)(2-4). (This is a GIL).

April 12, 2002

Dear Xxxxx:

This letter is in response to your letter dated February 25, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

This letter is a request by the Village for guidance in a matter that may require the Village to collect and remit sales taxes. Specifically, the Village has published a history book of VILLAGE that heretofore has not been sold to the general public. I have been informed, however, that the Public Library is considering selling the book for \$10.00 a copy.

Inasmuch as it is unlikely that the sale of the book will result in a significant number of sales and given that the book was published by the Village primarily for use in area schools, is the Village/Library required to collect and remit sales tax on the sale of the history book? Please advise of your determination as soon as possible as the Library would like to begin selling the books in the near future.

Please let me know if you have any questions or require additional information.

Thank you for your attention to this matter.

For purposes of this response, we assume the selling of the book will be done by the Public Library. Since August 1, 1961, many governmental bodies must register with the Illinois Department of Revenue and collect and remit Retailers' Occupation Tax (sales tax) on their sales of tangible personal property, unless they engage in a type of sale that performs a governmental function. Department regulation 86 Ill. Adm. Code 130.2055(a) provides that "the State of Illinois or any local governments in Illinois, or any agency or instrumentality of any such governmental body, incurs Retailers' Occupation Tax liability when it engages in the selling of tangible personal property at retail to the public other than in the performance of a governmental function. "

The reason for this rule is to ensure that governmental units do not have a competitive advantage when selling items that are also sold by Illinois retailers. The Illinois General Assembly did not intend to give governmental units a competitive advantage over Illinois retailers.

An example of sales that may be made by a governmental body to the public that involves the performance of a governmental function is the sale of motor vehicle license plates by the State of Illinois.

Where a governmental unit makes sales that are not in the direct performance of its governmental function, the sales are taxable. Examples of taxable sales by governmental units include the operation of concession stands by park districts, sales of smoke detectors by fire protection districts, sales of leaf bags by municipalities, sales of T-shirts, caps and mugs by State agencies, sales of books by libraries, and sales of books and supplies by school districts to students. Regarding the latter situation, the Illinois Supreme Court provided guidance in this area in the case of Follett's Book & Supply Store v. Isaacs, 27 Ill.2d 600, 1963. In Follett's the court analyzed a situation where schools were selling books only to their students. The schools were not charging sales tax pursuant to a Department of Revenue regulation that exempted sales of schoolbooks by schools to its students. Retail bookstores that competed with the school bookstores brought the lawsuit and claimed that the schools were operated for educational purposes and that their book sales were not essential to such purposes or operated in furtherance of such purposes. The Illinois Supreme Court concluded that the sales were subject to sales tax and the court voided the particular Department regulation that had exempted such sales from sales tax liability.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, charitable, or a governmental entity, receive an exemption identification number (an "E" number). This number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax. Please be aware that only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

We recognize that the Illinois Department of Revenue has issued the Village tax exemption identification number. This means the Department recognizes your village as a governmental body exempt from Use Tax when purchasing tangible personal property for use in furtherance of organizational purposes, and retailers do not incur Retailers' Occupation Tax on such sales. The Department's records do not show that the Public Library has applied for an "E" number. The Department has previously recognized the Public Library as a governmental entity for real estate tax exemption purposes on two different parcels of real estate. Based upon this prior action, it appears the library would qualify for an "E" number. If the library wishes to obtain one, it should contact the Exemption Section in the Department's Office of Local Government Services.

Although organizations that have E numbers are generally required to register and collect and remit Retailers' Occupation Tax upon sales of tangible personal property, such as books to the public, such organizations are allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. These limited amounts of selling are described in the enclosed copy of 86 Ill. Adm. Code 130.2005(a)(2) through (a)(4). An exempt organization may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities (two fundraisers a year) without incurring Retailers' Occupation Tax liability.

In regard to sales to members, please note that the population to which sales are made is limited to persons specifically associated with that exempt organization and must be for the primary purpose of the selling organization.

Please be informed that if an organization otherwise qualifies to make the noncompetitive sales described at Section 130.2005(a)(3), such sales must be infrequent and the dominant motive of the purchase must be the making of a donation to the organization which conducts the sale, rather than the acquisition of property. We suspect the dominant motive of purchasers of the history book will be to acquire the book for use as a reference source.

With respect to occasional dinners and similar activities, please note this exemption can apply if such fundraisers by exempt organizations occur not more than twice in any calendar year, 86 Ill. Adm. Code 130.2005(a)(4)(B). The selling of books by an exempt library on this type of limited basis can qualify for such exemption. However, continuous selling activity would constitute retail sales subject to tax.

Assuming that the selling activity qualifies as an exempt sale, an organization could use its E number to purchase items for such limited exempt sales. However, if an organization engages in ongoing selling activities (such as Little League concession stands or sales of items in a thrift shop run by a church), it must also register with the Department as a retailer, file returns and remit tax. This type of ongoing selling activity includes the sale of the books where such sales are not of limited duration, and would result in Retailers' Occupation Tax liability on the part of the seller. For these types of ongoing sales, organizations would provide their suppliers with Certificates of Resale for the items they purchase to resell and remit Retailers' Occupation Tax on their gross receipts from sales. See 86 Ill. Adm. Code 130.1405, enclosed, which describes the requirements for validly executed Certificates of Resale.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
Associate Counsel

KWB:msk  
Enc.